NO. 56797-1-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MATTHEW HOWARD, et al.,

Plaintiff/Respondent,

v.

JAMES PINKERTON,

Defendant/Appellant.

BRIEF OF APPELLANT

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I. INTRODUCTION

A landlord may only terminate a month-to-month tenancy for one of the sixteen grounds enumerated in RCW 59.18.650(2). The grounds generally reflect good reasons for why a landlord should be able to displace a tenant. One such reason is that the owner intends to recover the dwelling unit so that they can occupy it as their principal residence.

This case concerns an unlawful detainer action in which Landlords Matthew Howard and Cynthia Forland ("Landlords") alleged just this—that they needed to displace Appellant James Pinkerton from his home because they intended to occupy it. But the dwelling unit was, in the City's words, "an illegal, nonconforming space, without permits." The unit had no running water or toilet and was not fit for occupancy by anyone.

The Landlords in fact never intended to occupy the dwelling unit. By their own written admission, they intended to convert it to a storage structure. The Landlords needed to recover possession, not so that they could occupy the dwelling unit as

their primary residence as their notice alleged, but because they were unable to obtain the proper permits for their newly constructed single-family home because of their own bad acts in renting an uninhabitable shed to an elderly, disabled tenant.

There is no dispute surrounding the facts. While they have been inconsistent in their reason to evict, Landlords have fully admitted that they have never intended to occupy the dwelling unit in any capacity. Instead, Landlords argued that because they could not occupy their newly constructed single-family home because of Mr. Pinkerton's presence, which they allowed and benefited from in collection of rent, they should be able to take advantage of this statute provision. The trial court agreed, but this was an error.

It was never Mr. Pinkerton's position that he should be permitted to reside in his home forever, only that to terminate the tenancy the Landlords needed to comply with the law. There were several statute provisions the Landlords could have taken

advantage of to terminate his tenancy, but they opted for one with no basis in fact and this cannot stand.

The trial court erred when it found that the undisputed facts in this case created a cause of action for unlawful detainer for owner intent to occupy. This Court should vacate the order granting a writ of restitution, grant the tenant's defenses presented at show cause, and dismiss the action with prejudice because of the Landlord's failure to serve a proper notice prior to filing the unlawful detainer action.

II. ASSGINMENTS OF ERROR

No. 1 The trial court erred when it denied Mr. Pinkerton's motion to dismiss in his written answer.

No. 2. The trial court erred when it issued the March 18, 2022, Order granting a writ of restitution and issued the writ of restitution.

III. ISSUES PERTAINING TO ASSIGNEMENTS OF ERROR

A. Does RCW 59.18.650(2)(d) permit a landlord to terminate a tenancy when the landlord does not intend to occupy the tenant's dwelling but actually intends to convert it to another use? No.

B. Must a trial court dismiss an action for unlawful detainer when the tenancy is subject to the limitations of RCW 59.18.650(2) and the predicate notice misstates the reason for the termination of the tenancy? Yes.

C. Can a trial court issue a writ of restitution in an unlawful detainer action when the predicate notice to terminate tenancy fails to truthfully state just cause? No.

IV. STATEMENT OF THE CASE

This case concerns the tenancy of James Pinkerton. Mr. Pinkerton rented a workshop-like space for residential use for $200/month from Matthew Howard and Cynthia Forland; the pleadings sometimes refer to his space as a "shed". CP 3-4. The dwelling unit the Landlords rented to Mr. Pinkerton was not permitted by the City for human occupancy. CP 28, 30. It did not have running water or a toilet, among other deficiencies. CP 4. Mr. Pinkerton did not rent or have access to other areas nearby, such as the single-family home the landlords built on site. CP 4, 35.

On or about November 15, 2021, the Landlords served a 90-Day Notice to Terminate Tenancy on the basis that they

intended to occupy Mr. Pinkerton's dwelling unit as their principal residence. CP 4, 26. On or about February 18, 2022, the Landlords issued a 30-Day Notice to Terminate Tenancy on the basis that "the premises has been certified or condemned as uninhabitable by a local agency, and/or continued habitation of the premises would subject the landlord to civil or criminal penalties." CP 28, 35.

On February 22, 2022, the 90-Day Notice had expired and the 30-Day notice had not expired, Mr. Pinkerton had not vacated, and the Landlords filed an unlawful detainer action in Lewis County. CP 3, 5. The complaint sought termination of the tenancy and a writ of restitution. CP 3, 5. The Landlords based the action only on the 90-Day Notice; they neither pleaded nor attached the 30-Day Notice. CP 3-7.

The Complaint states that the Landlords intended to "utilize [Mr. Pinkerton's dwelling unit] as part of the principal residence." CP 4. The notice itself states that they "seek possession of the portion of the premises [Mr. Pinkerton]

occup[ies] so that [the Landlords] may occupy the unit as part of their principal residence." CP 26.

The Landlords then contradicted these statements. The Complaint describes that the Landlords were in the process of constructing a single-family home on the property, which they intended to occupy as their principal residence, not Mr. Pinkerton's dwelling unit. CP 4. On or about November 24, 2021, the City of Centralia had issued a notice to the Landlords that alerted them that they were renting to Mr. Pinkerton an illegal and unpermitted dwelling unit. CP 30. Because of this, the City would not issue an occupancy permit for their new home. CP 30. In response to the letter from the City, the Landlords responded that their "intention is to convert the accessory structure…back to storage use." CP 32.

Mr. Pinkerton served and filed an Answer, Affirmative Defenses, Motion to Dismiss, and Objection to Issuance of Writ in advance of the show cause hearing the Landlords noted. CP 14-45. He contended that the Landlords had failed to establish

cause to terminate his tenancy because they did not intend to occupy his dwelling unit by their own admission and that they brought the action in bad faith, in violation of the statute. CP 18-22. In response to Mr. Pinkerton's Answer, Landlord Matthew Howard served and filed a new declaration, which created a new basis to terminate: "this shed is depriving me my use of my newly constructed principal residence." CP 46-47.

On March 18, 2022, the trial court held a show cause hearing. After hearing argument by both counsels, the Honorable Judge Lawson found:

> **While it's clear that the plaintiffs do not want to live in this shed**, they want to live in the residence, inside the house that they built, that they can't accesses, they can't have, while this illegal, nonconforming use continues.
>
> There's some good faith requirements here. But that good faith runs both ways. And this leads to a rather absurd result that there's—that Mr. Pinkerton could then, basically hold up the Howards from using their new home, saying "well you're not sleeping here." They can't get into their residence either because of this.
>
> And so I think that that is the – the Residential Landlord-Tenant Act and all those provisions, they are technical. They have, I think, a solid basis as far as policy goes. But

> I think even that can go too far. **And I think we're getting into an absurd result here were I to deny this writ**. So I'm going to approve an order for the issuance of the writ in this case.

VRP at 12 (emphasis added).

The trial court signed the order for issuance of the writ, but did not enter judgment for either party. CP 52-53; VRP at 12. Mr. Pinkerton now appeals this decision. CP 59-66.

V. ARGUMENT

A. Standard of Review.

When "the trial court has not seen nor heard testimony requiring it to assess the credibility or competency of witnesses, and to weigh the evidence, nor reconcile conflicting evidence, then on appeal a court of review stands in the same position as the trial court in looking at the facts of the case and should review the record de novo." *Smith v. Skagit Cty.*, 75 Wn.2d 715, 718, 453 P.2d 832 (1969); *see also Progressive Animal Welfare Soc. v. University of Washington*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994) ("[T]he appellate court stands in the same position as the

trial court where the record consists only of affidavits, memoranda of law, and other documentary evidence.").

The provisions of RCW 59.18 are strictly construed in favor of the tenant, and so to the extent there are ambiguities in RCW 59.18.650, they should be resolved in favor of Mr. Pinkerton. *Randy Reynolds & Assocs., Inc. v. Harmon*, 193 Wn. 2d 143, 156, 437 P.3d 677 (2019) ("Chapters 59.12 and 59.18 RCW are statutes in derogation of the common law and thus are strictly construed in favor of the tenant.")

B. The trial court erred when it found that the facts supported a cause of action for unlawful detainer based on a notice of owner intent to occupy.

1. The Residential Landlord Tenant Act requires good faith and a specific reason to terminate a month-to-month tenancy

With limited exceptions, "a landlord may not evict a tenant, refuse to continue a tenancy, or end a periodic tenancy except for the causes enumerated" within RCW 59.18.650(2). RCW 59.18.650(1). There are diverse causes listed within that section, some requiring fault by the tenant such as nonpayment

of rent or breach of lease, and others considering a landlord's need to recover the property for personal or business reasons, such as landlord's need to sell or occupy it. *See* RCW 59.18.650(2)(a), (b), (d), (e). Regardless of the reason, the landlord's use of the causes for termination is subject to a good faith performance and may not be pre-textual or misrepresent the landlord's intent. RCW 59.18.020 ("Every duty under this chapter [the Residential Landlord Tenant Act] and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement."); *see also Faciszewski v. Brown*, 187 Wn.2d 308, 386 P.3d 711 (2016) (holding tenant could challenge pretextual intent-to-reside termination notice).

Both parties agree that this tenancy is subject to the Residential Landlord Tenant Act ("RLTA") and the stated eviction protections. CP 4.

2. By their own admission, Landlords never intended to occupy the dwelling unit so their notice does not satisfy the requirements of RCW 59.18.650(2)(d)

The RLTA allows a landlord to terminate a tenancy when:

> the landlord of a **dwelling unit in good faith** seeks possession so that the owner or his or her immediate family **may occupy the unit as that person's principal residence** and no substantially equivalent unit is vacant and available to house the owner or his or her immediate family in the same building, and the owner has provided at least 90 days' advance written notice of the date the tenant's possession is to end…

RCW 59.18.650(2)(d) (emphasis added).

When a court interprets language in a statute, the "fundamental objective is to ascertain and carry out the Legislature's intent." *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9–10, 43 P.3d 4, 9 (2002). Courts must give effect to the plain meaning of a statute, when it is plain on its face. *Id*. The plain meaning of a statute "is discerned from all that the Legislature has said in the statute and related statutes

which disclose legislative intent about the provision in question." *Id*., at 11.

"The goal of construing statutory language is to carry out the intent of the legislature; in doing so, we avoid strained, unlikely, or unrealistic interpretations. Unless the statute expresses a contrary intent, we may resort to an applicable dictionary definition to determine the plain and ordinary meaning of a word that is not otherwise defined by the statute." *First Student, Inc. v. Dep't of Revenue*, 194 Wn.2d 707, 711, 451 P.3d 1094, 1097 (2019) (citations omitted).

If a statute is ambiguous, courts "must construe it to give effect to legislative intent." *Hartson P'ship v. Goodwin*, 99 Wn. App. 227, 235, 991 P.2d 1211, 1215 (2000). "All of the language used in the statute must be given effect, with no portion rendered meaningless or superfluous." *Id*. On the other hand, courts will not read into a statute language that is not present. *See In re Det. of Williams*, 147 Wn.2d 476, 491, 55 P.3d 597, 604 (2002). Courts consider omissions in a statute to be an exclusion. *Id*.

("Under *expressio unius est exclusio alterius*, a canon of statutory construction, to express one thing in a statute implies the exclusion of the other.").

RCW 59.18.650 (2)(d) requires the landlord to intend to occupy the "dwelling unit" that is rented to the tenant. "Dwelling unit" is defined by the RLTA as "a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single-family residences and units of multiplexes, apartment buildings, and mobile homes." RCW 59.18.030(10). A dwelling unit could include a house and shed, if those buildings are leased to a tenant, or include "that part of a structure" that is used as a home, such as a single room or outbuilding.

The Landlords here have attempted to broaden the scope of RCW 59.18.650(2)(d) to allow them to take advantage of the statute provision without actually intending to occupy the clearly defined "dwelling unit." However, no authority is offered to

support the broadening and, in fact, a review of other definition provisions demonstrates that the Legislature must not have intended such a broad interpretation.

The Legislature could have, but did not, include language allowing RCW 59.18.650(2)(d) to apply where a landlord sought to move into related structures on a single parcel of property. The RLTA defines "premises" broader than "dwelling unit" because it includes both the dwelling unit and "appurtences thereto." RCW 59.18.030(22). (""Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.") The Legislature did not use the term "premises" in RCW 59.18.650(2)(d). The Legislature did use the word "premises" elsewhere in RCW 59.18.650, including in the section on condemned units. RCW 59.18.650(2)(h). When the Legislature may choose from two defined terms and chooses one over the other, the Court must give meaning to that choice and assume the Legislature intended to apply the difference between

"dwelling unit" and "premises" in RCW 59.18.650(2)(d). *In re Det. of Swanson*, 115 Wn.2d 21, 27, 804 P.2d 1 (1990) ("[W]here the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent.") (internal quotations omitted).

The Landlords in this case attempt to substitute terms for "dwelling" in RCW 59.18.650(2)(d). VRP at 12 ("We can…substitute the word "dwelling unit" with "residence") and ("Now, if we got back to – again, kind of going back to law school, kind of, and replace the word dwelling unit with residence…"). However, the term "residence" that the Landlords offer is irrelevant. The relevant inquiry is what the dwelling unit is and whether Plaintiffs intend to occupy the dwelling unit. There is no dispute that the Landlords never intended to occupy Mr. Pinkerton's dwelling unit in any capacity. CP 4-5; VRP at 7. The Landlords needed to evict Mr. Pinkerton because his tenancy created an inconvenience for them because they were unable to obtain an occupancy permit for their true home. CP 4-

5; CP 46-47. The parties agree, without factual dispute, that the dwelling unit that Mr. Pinkerton paid rent for was uninhabitable, unpermitted by the City, and without running water or a toilet; it was illegal for the landlords to rent the space to Mr. Pinkerton. CP 5; CP 30; CP 32; CP 35; CP 46-47.

In acknowledgment that the Landlords did not intend to occupy the dwelling unit despite their use of a notice that alleged they intended to occupy the dwelling unit, they sought to add language to that statute by arguing that they may terminate a tenancy where the owner intends to occupy the dwelling *in part*. CP 4; CP 26. But even that was not true; they never intended to occupy any *part* of the dwelling unit. CP 32 ("Our intention is to convert the accessory structure…back to storage use. This has been our intention for some time.").

At the show cause hearing, Landlord's counsel orally argued that this would be akin to a situation where a tenant rented a garage and in that situation, this owner intent-to-occupy notice would also be appropriate. VRP at 7. This was argued in support

of the contention that even though the Landlords do not intend to occupy the dwelling unit, whether that be the shed structure in the instant case or a garage in the hypothetical, the owner intent to occupy notice is appropriate. This is incorrect; in either factual scenario, the dwelling unit is a defined structure, the owner never intends to occupy that structure, and thus the owner intent-to-occupy notice is not available to the landlord.

Depending on the facts, there are other, more appropriate sections of the statute that the Landlords or any other landlord could rely on to remove such a tenant (discussed in greater depth in Section V(2)(c)). The Landlords' attempt to expand the statute allowing for owner intent to occupy a dwelling unit as a basis for eviction to instances where landlords illegally rent uninhabitable spaces to vulnerable tenants whose presence later inconveniences them, must be disregarded.

Mr. Pinkerton offers a common sense approach: if a landlord serves a notice for termination based on a landlord's intent to occupy the dwelling unit, they must intend to occupy

the dwelling unit. If the landlord does not intend to occupy the dwelling unit, then they must serve a different kind of notice or permit the tenant to remain. RCW 59.18.650 offers sixteen grounds to terminate a tenancy; as discussed below, the Landlords should have chosen one that applied.

3. The trial court erred when it held that the Landlords would be without a remedy to evict Mr. Pinkerton if it did not evict him on the owners' intent to occupy notice

The trial court, apparently in frustration, found that not evicting Mr. Pinkerton on a 90-day notice would deprive the landlords of their ability to use their property. VRP at 12 ("And I think we're getting into an absurd result here were I to deny this writ."). The court failed to understand that RCW 59.18.650 provides the landlords with several other options to terminate Mr. Pinkerton's tenancy but that they failed to proceed on those grounds. Their failure to follow the statute does not relieve the court of its obligation to construe the statute to favor the tenant.

Hous. Auth. v. Terry, 114 Wn.2d 558, 789 P.2d 489 (1990); *Wilson v. Daniels*, 31 Wn.2d 633, 198 P.2d 496 (1948).

After the trial court acknowledged that, "it's clear that the [Landlords] do not want to live in [the] shed", it expressed concern that "Mr. Pinkerton could then, basically, hold up the [Landlords] from using their new home." VRP at 12. The trial court stated there would be an "absurd result…were [he] to deny [the] writ" and noted that Mr. Pinkerton's arguments were "technical." VRP at 12. The court did not evaluate the other causes in RCW 59.18.650 in its reasoning. VRP at 12.

This was an error for two reasons. First, the RLTA exists to govern these tenancies and the procedure to terminate them; it was not appropriate for the trial court to deem Mr. Pinkerton's arguments as merely "technical" or elevate the Landlord's desires to use the property over his right to possession, and therefore disregard the requirements of the RLTA. The RLTA is a statute in derogation of the common law, as is the unlawful detainer process, and must be construed to favor the tenant in

evictions. *Hous. Auth. v. Terry*, 114 Wn.2d 558, 789 P.2d 489 (1990); *Wilson v. Daniels*, 31 Wn.2d 633, 198 P.2d 496 (1948). The trial court's reasoning would permit any landlord to file a notice under any provision of the statute, even if false, and then later explain to the court the real reasons for eviction. If the court finds those reasons sympathetic enough—as the trial court did here—then a tenant could be evicted based on a notice that contained false statements, as happened here.

The RLTA provides ample provisions to lawfully terminate a tenancy. Several of them could have applied to this case, so the trial court's concern that Mr. Pinkerton could prolong his tenancy indefinitely at the expense of the Landlords was misplaced.

For example, due to the illegal conditions of the dwelling unit that resulted in the City's letter notifying the Landlords of their need to cure their illegal rental, the Landlords could have served a notice pursuant to RCW 59.18.650(2)(h) terminating the tenancy for condemnation. The Landlords did in fact serve such

a notice, but did not wait the 30 days after service to file their complaint. CP 5. Compliance with statutory notice periods is mandatory and a premature filing must be dismissed. *Cmty. Invs., Ltd. v. Safeway Stores, Inc.,* 36 Wn. App. 34, 37, 671 P.2d 289, 291 (1983).

Likewise, if the Landlords did actually intended to convert the structure (CP 32), they could have attempted an eviction pursuant to RCW 59.18.650(2)(f). Subsection (f) permits a landlord to substantial remodel or convert the residence to a "nonresidence" use. The Landlords clearly intended to convert the shed to a nonresidence use. They could have used this, provided 120 days' notice to Mr. Pinkerton, and not misrepresented their intent to him instead. They did not do this.

Additionally, had the Landlords permitted Mr. Pinkerton to use their restroom, they could have taken advantage of RCW 59.18.650(2)(i) (the tenant continues in possession after an owner or lessor, with whom the tenant shares the dwelling unit or access to a common kitchen or bathroom area, has served at

least 20 days' advance written notice to vacate prior to the end of the rental term or, if a periodic tenancy, the end of the rental period;). Another option would be to serve a notice pursuant to RCW 59.18.650(2)(m) ("the tenant continues in possession after having received at least 60 days' advance written notice to vacate for other good cause prior to the end of the period or rental agreement and such cause constitutes a legitimate economic or business reason not covered or related to a basis for ending the lease as enumerated under this subsection (2)…"). Any of these four notices would have been adequate for the landlord to proceed to show cause under.

Mr. Pinkerton offers no opinion on which statute provision would be valid or best encompass the situation and only seeks to illustrate that variety of legal mechanisms available to terminate the tenancy. It matters that landlords be required to choose an applicable ground to evict rather than false ones not only to ensure the law is followed but also because some notices provide greater (or less) benefits to tenants. Some notices provide more

than 90 days to vacate (RCW 59.18.650(2)(f); RCW 59.18.200(2)(c)); other notices implicate required relocation assistance (RCW 59.18.085). While these other notices may have been less advantageous or financially beneficial to the Landlords, they were nonetheless available to them. The 90-Day owner intent to occupy notice was not. The trial court's reliance on an "absurd result," (VRP at 12) which really was not so absurd, to order issuance of the writ was an error.

C. The trial court erred when it failed to dismiss the unlawful detainer for failure to state a cause of action.

Dismissal of an action is appropriate where a party has failed to state a claim on which a court can grant relief. CR 12(b)(6). Defendants in unlawful detainer may raise any defense at the show cause hearing in writing or orally. RCW 59.18.380. Mr. Pinkerton timely raised all his defenses at the show cause hearing. CP 14-45.

To the extent that Landlords argue that the trial court could not entertain the motion to dismiss because it was not noted

pursuant to CR 5, RCW 59.18.380 does not limit the kinds of defenses that may be presented on the day of the hearing, and the fact that a case should be dismissed is certainly a defense to unlawful detainer. Furthermore, "courts possess inherent equitable powers to fashion remedies as justice demands." *Randy Reynolds & Associates v. Harmon* 193 Wash.2d 143, 162 (citations omitted).

Mr. Pinkerton raised failure to state a cause of action in his written Answer, Affirmative Defenses, Motion to Dismiss, and Objection to Issuance of Writ, served and filed in advance of the show cause hearing. CP 14-45. As detailed in Section V(B) of this brief, Plaintiffs failed to comply with the jurisdictional conditions precedent to maintaining the unlawful detainer action. Specifically, the notice on which the action was based was clearly false and does not list a valid reason to terminate tenancy under the Residential Landlord Tenant Act. *See*, RCW 59.18.650(2). A valid notice to terminate tenancy is an essential element of an unlawful detainer action and the lack of such notice

in this case establishes that Plaintiffs failed to state a valid cause of action.

D. The trial court erred when it issued an order granting a writ of restitution, because Landlords were not entitled to possession, and the trial court erred in not entering judgment for any party or ordering Landlords to pay a bond.

RCW 59.18.380 provides, in pertinent part:

> "The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and **(1) if it shall appear that the plaintiff has the right to be restored to possession of the property,** the court shall enter an **order** directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and **(2) if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted** other relief as prayed for in the complaint and provided for in this chapter, the court may enter an **order** and judgment granting so much of such relief as may be sustained by the proof."
>
> RCW 59.18.380 (numbers inserted and emphasis added).

If the court enters a writ without entering a judgment, the court must set the matter for trial and require plaintiff to post bond. *Id.* If the court enters a writ but no judgment, then the tenancy is not terminated because the writ has not granted the

"other relief" to the landlord of termination of the tenancy. *Webster v. Litz*, 18 Wn. App. 2d 248, 253, 491 P.3d 171, 174 (2021).

Only possession is denied to the tenant, as the writ is merely a writ pendente lite restoring possession to the landlord until a judgment terminating the tenancy is entered.

In this case, the trial court entered an order to issue a writ of restitution, which Mr. Pinkerton alleges was in error because Landlords did not have the right to be restored possession as detailed thoroughly in Section (V)(2). Mr. Pinkerton contends there was a second error here in that the trial court failed to enter an order directing judgment for either party or ordering the landlord to post bond and set the matter for trial on the disputes of fact.

E. The Court should award attorneys' fees and costs.

Pursuant to RAP 18.1, Mr. Pinkerton is a prevailing party and the Court should award his attorneys' fees and costs. Mr.

Pinkerton is entitled to fees under RCW 59.18.290 and RCW 59.18.650(4).

VI. CONCLUSION

The trial court's order issuing writ in this unlawful detainer action was inconsistent with the law. This Court should vacate the order granting a writ of restitution, grant the tenant's defenses presented at show cause, and dismiss the action with prejudice because of the Landlord's failure to serve a proper notice prior to filing the unlawful detainer action.

CERTIFICATE OF WORD COUNT

Pursuant to RAP 18.17(b), I, Lauren Holzer, counsel for Appellant James Pinkerton, hereby certify that the word count for this brief is 4,769 words, which does not include the cover or the tables. This brief therefore complies with the rule, which limits a brief to 12,000 words. I certify that I prepared this document in Microsoft Word, and this is the word count Microsoft Word generated for this document.

RESPECTFULLY submitted this 1st day of August, 2022.

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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on this 1st day of August 2022, I caused to be delivered by E-service via the Washington State Appellate Courts' Portal, a true a correct copy of this ***Brief of Appellant***, addressed to the following:

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SIGNED at Tacoma, Washington, this 1st day of August, 2022.

s/ Eudora Powell
Eudora Powell, Legal Assistant

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Appellant's Brief

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